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Student Drug Testing

This information is provided as a service of the Montana Office of Public Instruction to local school districts. It provides guidance only on the topic of student drug testing and is not to be construed as endorsement or criticism of local policy.

A. Background

President Bush's No Child Left Behind Act of 2001 (NCLB) introduced student drug testing as an authorized activity that can be funded through Title IV-A "Safe and Drug Free Schools and Communities Act" and allocated to local ESEA districts from the Montana Office of Public Instruction (OPI):

Sec. 4115 (b) (2) AUTHORIZED ACTIVITIES- Each local educational agency, or consortium of such agencies, that receives a subgrant under this subpart may use such funds to carry out activities that comply with the principles of effectiveness described in subsection (a), such as the following:

(E) Drug and violence prevention activities that may include the following:

"(xiv) Consistent with the fourth amendment to the Constitution of the United States, the testing of a student for illegal drug use or the inspecting of a student's locker for weapons or illegal drugs or drug paraphernalia, including at the request of or with the consent of a parent or legal guardian of the student, if the local educational agency elects to so test or inspect."

Constitution of the United States, Amendment 4:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In 1995 the U.S. Supreme Court ruled that schools could randomly drug test student athletes. The Court expanded that ruling in 2002 to include students in competitive extra-curricular activities. The Court has also supported testing when there is a reasonable suspicion that a student is under the influence of illegal drugs while at school. The U.S. Supreme Court does not offer a blanket endorsement of drug testing for all students. (*Vernonia School District 47J vs. Acton*, 115 S.Ct. 2386 and *Board of Education of Independent School District 92 of Pottawatomie County vs. Earls*, 122 S.Ct. 2559)

There is no Montana state statute that addresses drug testing in schools. The Montana Supreme Court has upheld a very high right to privacy:

Montana Constitution, Article II, Section 10. Right of Privacy: The right of individual privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest.

B. Considerations

The decision whether or not to implement a student drug testing program is the prerogative of the local school district. Development of a student drug-testing program can be complicated and contentious; OPI recommends that any district considering development of a testing program start by enlisting legal advice from the Montana School Boards Association or an attorney that has experience and knowledge about this issue.

The National Association of Student Assistance Professionals (NASAP) advises that a district first address these questions:

- Does the school have an existing process for identifying and referring students who may be harmfully involved with alcohol and other drugs, such as a student assistance process?
- Has the school actively sought opinions and concerns from parents, students, and community members prior to implementation?
- What will happen to students who test positive for substances? How will participation in extra-curricular activities be affected?
- Where and how long will records be kept on test results?
- Who will do the actual collection of body fluids?
- What technology will the school utilize, such as urine testing, oral swab, or hair follicle?
- How will the drug testing process be funded?

If schools do choose to conduct drug testing with federal Safe and Drug-Free Schools and Communities funds, schools must ensure they are in compliance with the Principles of Effectiveness developed by the federal Department of Education (Sec. 4115 (a) (1)). A condensed description follows.

Principles of Effectiveness: in order to be considered in compliance with this requirement, a program or activity shall:

- A. be based on an assessment of objective data;
- B. be based on a set of performance measures that assures the schools and communities to be served have a safe, orderly, and drug-free learning environment;
- C. be based on scientifically based research;
- D. be based on an analysis of the data reasonably available at the time; and
- E. include meaningful and ongoing consultation with and input from parents.

C. Funding

School districts can include costs associated with development and implementation of a student drug-testing program from their ESEA Title IV-A Safe and Drug-Free Schools award.

In general, related costs could include, but not be limited to:

- analysis of local data establishing the need;
- convening an advisory group representing parents, students, school administration, student assistance directors and other involved partners;
- policy development;
- training and quality control for test administrators;
- purchase of testing supplies, equipment for proper control of specimens, shipping and medical analysis;
- public information; and
- evaluation and modification of policy as indicated.

Drug testing of prospective or current school staff is not an allowable expense from this fund, even though the cost of conducting background checks is allowed.

Resources for further information:

- ✓ **National Association of Student Assistance Professionals:** www.nasap.org
- ✓ **National School Boards Association:** www.nsba.org
- ✓ **U.S. Department of Education, Office of Safe and Drug-Free Schools:**
www.ed.gov/offices/OSDFS
- ✓ **U.S. Office of National Drug Control Policy:**
www.whitehousedrugpolicy.gov/publications/drug_testing
- ✓ **Institute for Behavior And Health:** www.ibhinc.org
- ✓ **Drug Free Schools Coalition, National Student Drug-Testing Committee:**
www.studentdrugtesting.org
- ✓ **The Center for Health and Health Care in Schools:** www.healthinschools.org
- ✓ **American Civil Liberties Union:** www.aclu.org
- ✓ **Drug Policy Alliance:** www.drugpolicy.org